

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA,)
)
)
) Case No. 1:11CR00037-003
)
v.)
)
CHARLES EARNEST HAVENS, JR.,) **OPINION**
)
)
) By: James P. Jones
) United States District Judge
)
)
 Defendant.)

Charles Earnest Havens, Jr., Pro Se Defendant.

The defendant, Charles Earnest Havens, Jr., a federal inmate proceeding pro se, filed a motion seeking appointment of counsel to assist him in challenging his prior conviction and sentence in this court. By prior Opinion and Order, I denied that motion, but construed and conditionally filed the pleading as a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. I now conclude that the § 2255 action must be dismissed without prejudice.

Havens pleaded guilty to one count of conspiring to possess with the intent to distribute 500 grams or more of methamphetamine. On August 10, 2012, I sentenced him to 240 months in prison. He did not appeal and withdrew a previous § 2255 motion.

In April of 2019, Havens filed the instant motion. On April 29, 2019, I issued an Opinion and Order, notifying him of the pending, conditionally filed §

2255 motion and advising him that his submission appeared to be untimely filed under § 2255(f). My Order directed Havens to submit within 21 days his objection to the court's construction of his motion as a § 2255 motion *or* to submit an amended § 2255 motion, stating his claims for relief. *See Castro v. United States*, 540 U.S. 375 (2003) (finding district court must offer defendant opportunity to agree to court's stated intention to address his post-conviction motion as his initial § 2255 motion). The Order stated that "failure to comply with this Order will result in the dismissal of the conditionally filed § 2255 action without prejudice." Op. & Order 4, ECF No. 307. The time granted for Havens to file an Amended Motion under § 2255 has expired, and he has had no further communication with the court. Based on that lack of response to my Order, I will dismiss the conditionally filed § 2255 action without prejudice.

A separate Final Order will be entered herewith.

DATED: May 24, 2019

/s/ James P. Jones
United States District Judge